

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PERRY O. MACKALL,

Plaintiff,

Case No. 05-CV-71494

vs.

HON. GEORGE CARAM STEEH

JANE DOE, et al.,

Defendants.

/

ORDER ACCEPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION AND DISMISSING COMPLAINT

This matter is one in which *pro se* plaintiff Perry Mackall, an inmate with the Michigan Department of Corrections, was granted *in forma pauperis* status for the filing of his complaint, which alleges destruction of personal mail and religious items.¹

As provided by 28 U.S.C. § 636(b)(1)(B) and E.D. Mich. LR 72.1(b)(2), the case was assigned to Magistrate Judge Scheer for pre-trial proceedings. Before the court is the magistrate's Report and Recommendation, filed August 31, 2005, recommending the dismissal of plaintiff's complaint under the "three strikes" rule, 28 U.S.C. § 1915(g).

In Magistrate Scheer's Report and Recommendation, the conclusion section clearly stated that objections to his report and recommendation were to be filed within

¹ The court notes that plaintiff appended numerous "Attachments" to his complaint, including Attachment (5), which generally asserts his complaint of poor treatment in Michigan prisons, including withholding of medical attention, but does not allege "imminent danger of serious physical injury" as required for exemption from the three strikes rule (see below). However, the "Statement of Claim" section in plaintiff's complaint solely addresses damaged mail and religious materials, and does not refer to any attachment(s). In any event, due to the complaint's dismissal under the "three strikes rule," it is unnecessary for the court to determine exactly what comprises plaintiff's claims in this matter.

10 days of service of a copy thereof. 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b). However, plaintiff has filed no objections to the report and recommendation to date. The failure to file such objections waives a party's right to further appeal. Howard v. Secretary of Health & Human Services, 932 F.2d 505 (6th Cir. 1991). Also see U.S. v. Campbell, 261 F.3d 628, 631-32 (6th Cir. 2001) (citing Thomas v. Arn, 728 F.2d 813 (6th Cir. 1984), *aff'd* 474 U.S. 140 (1985)).

The court has considered the plaintiff's complaint and the report and recommendation of the magistrate in this matter. The court is in agreement that the "three strikes" rule mandates this court's dismissal of this action, as this prisoner has not alleged that he is "under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). Therefore, for the reasons stated in the report and recommendation of Magistrate Judge Scheer, plaintiff's complaint is hereby DISMISSED.

IT IS SO ORDERED.

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

Dated: October 13, 2005

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record on October 13, 2005, by electronic and/or ordinary mail.

S/Josephine Chaffee
Secretary/Deputy Clerk